

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN PHILLIP ANDERSON,

Petitioner,

v.

KAREN BRUNSON,

Respondent.

CASE NO. C07-635BHS

ORDER DENYING
CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on Petitioner's Notice of Appeal and Request for Certificate of Appealability (Dkt. 22). The Court has reviewed the relevant documents and the record herein.

I. PROCEDURAL HISTORY

On November 29, 2007, U.S. Magistrate Judge James P. Donohue issued a Report and Recommendation recommending dismissal of the habeas corpus petition with prejudice. Dkt. 17. The report and recommendation concluded that Petitioner's Sixth Amendment right to be informed of the state's accusation against him was not violated by failing to include the elements of the aggravating factors in the charging document where Petitioner was charged with Aggravated First Degree Murder; and finding that Petitioner's Sixth Amendment due process rights were not violated when the judge refused to present the jury with a lesser-included instruction that the jury could find Petitioner guilty of the lesser offense of First Degree Kidnapping. *Id.* On January 4, 2008, the Court adopted the Report and Recommendation and dismissed the habeas corpus petition with prejudice. Petitioner has now appealed to the U.S. Court of Appeals

1 for the Ninth Circuit by filing his Notice of Appeal and Request for Certificate of
2 Appealability (Dkt. 22).

3 **II. STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY**

4 The district court should grant an application for a Certificate of Appealability
5 only if the petitioner makes a “substantial showing of the denial of a constitutional right.”
6 28 U.S.C. § 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. §
7 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate
8 whether, or agree that, the petition should have been resolved in a different manner or that
9 the issues presented were adequate to deserve encouragement to proceed further. *Slack v.*
10 *McDaniel*, 120 S. Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880,
11 893 n.4 (1983)).

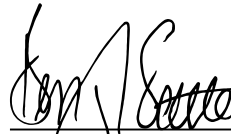
12 **III. DISCUSSION**

13 This Court dismissed the habeas corpus petition for the reasons that the state
14 court’s decisions rejecting Petitioner’s Sixth Amendment arguments and upholding his
15 conviction were neither contrary to, nor an unreasonable application of, clearly
16 established Supreme Court law. There is nothing in the record that would support a
17 conclusion that jurists of reason would find it debatable whether this Court’s
18 determination that the Washington Court of Appeals’ adjudication of Petitioner’s habeas
19 claim on the merits was contrary to, or an unreasonable application of, clearly established
20 federal law. Therefore, the Certificate of Appealability should be denied.

21 **IV. ORDER**

22 Accordingly, it is hereby **ORDERED** that Petitioner’s Notice of Appeal and
23 Request for Certificate of Appealability (Dkt. 22) is **DENIED**.

24 DATED this 14th day of February, 2008.

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26 _____
27 BENJAMIN H. SETTLE
28 United States District Judge